

Encouraging Diversity, Growth and Equity (EDGE) | Ohio Administrative Code 123:2-16

Ohio Administrative Code	Code Title	Type of Rule Filing (Amendment, Rescinded, New)	Summary (Proposed Change)	Cleveland Stakeholders' Questions/Comments	Cincinnati Stakeholders' Questions/Comments	Columbus Stakeholders' Questions/Comments
123:2-16-01	Definitions	Amendment	<ul style="list-style-type: none"> Modification: Provides for clearer definitions for rule terms such as the following: in business; Economically Disadvantaged Business size limits for participation in the program; principal office; net worth; owned and controlled; and minor terms. 		<ul style="list-style-type: none"> The following definitions should be modified: "Economically Disadvantaged Business," "Economically Disadvantaged Person" and "Social disadvantage" for the EDGE program. EDGE definitions should mirror SBA's definitions. Prior to any other considerations, i.e., economically disadvantage size, etc., the business owners must first be determined to be socially disadvantaged individuals that satisfies the size criteria listed in 13 CFR part 121 Small Business Size Regulations. Strict adherence to that standard reinforces both the letter and intent of ORC 123.152. The implementation of these recommendations would insure the intended individuals are properly identified (Socially and Economically Disadvantaged Persons). Independent definition needs to be revised. What does it mean – what if you have a partner that is not socially and economically disadvantaged? 	<ul style="list-style-type: none"> There are inconsistencies with socially/economically definitions amongst agencies and other governmental agencies.
123:2-16-02	Certification criteria	Amendment	<ul style="list-style-type: none"> Modification: Clarifies ownership and control requirements. Modification: Identifies that control is comprised of operational control, managerial control and independence. Modification: Defines that ownership cannot be de facto. Remove requirement to have application notarized. 		<ul style="list-style-type: none"> 123:2-16-02 (4) current rule should be amended, however stakeholder does not agree with amended language. The language should include appropriate socially and economically disadvantaged criteria. Such modification will also require the balance of this rule section to be changed. The implementation of these recommendations would insure eligibility for firms to participate is clear and succinct (firms matching the ownership by person described as socially and economically disadvantaged persons or eligible citizen and resident owner whose firms satisfy location and size requirements). 	

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123:2-16-02	Certification criteria (continued)				<ul style="list-style-type: none"> • The SBA size determinations 13 CFR Part 121 should continue to be applicable for the EDGE program. • There are numerous proposed modifications involving the terms “shall” and “must” to “may” tend to undermine accountability and provide discretions where should be none. For example, proposed rule 123:16-02(B) “The equal employment opportunity coordinator of the department of administrative services (shall is removed and replaced) may certify a business as an EDGE business enterprise, provided the owner or owners of the business demonstrate all of the following...” If the applicant has demonstrated compliance with all of the listed criteria, why is there a discretion regarding its certification. This is to ensure that the criteria are valid and mandates a decision. • Retirement savings should not be counted toward an EDGE owner’s net worth. • There should be no time limit for participation in the EDGE program. This requirement should be removed. 	<ul style="list-style-type: none"> • The SBA size determinations 13 CFR Part 121 should continue to be applicable for the EDGE program. • The state is proposing numerous modifications involving the terms “shall” and replaced with “may.” The rule should reflect “shall” not “may.” • Retirement savings should not be counted toward an EDGE owner’s net worth. • One year certified with the other entity – must be certified elsewhere – should be removed. • There should be no time limit for participation in the EDGE program. This requirement should be removed.
123:2-16-03	Certification of business structure	Amendment	<ul style="list-style-type: none"> • Modification: Defines control as it relates to a business structure. • Modification: Clarifies items an owner must do in the business to be considered in control. • Modification: Businesses removed for non-disciplinary reasons or graduated from the program may re-enter the program after one year, provided that the business meets all eligibility requirements. 		<ul style="list-style-type: none"> • 123:2-16-03(B)(10): Why is an EDGE owner required to work full time with the company? As a small business owner, some owners have outside jobs. This rule hinders small business owners because in some cases, there is not enough income to support them. This requirement should be reconsidered. 	

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123:2-16-04	Expedited certification	Amendment	<ul style="list-style-type: none"> • Modification: Updates same or similar program for inclusion into the program. • Modification: Clarifies that the EEO Coordinator can request new documents be submitted at recertification time. 			
123:2-16-05	Recertification	Amendment	<ul style="list-style-type: none"> • Modification: Clarifies language used to recertify a company into the program. • Addition: Provides for grace period for recertification. • Addition: Add reasons for not being granted recertification. 			
123:2-16-06	Decertification	Amendment	<ul style="list-style-type: none"> • Modification: Defines removal for cause, i.e., owner(s) no longer United States citizens or full-time residence of Ohio. • Addition: Adds ability to temporarily suspend certification due to the filing of an indictment, information or other criminal or civil charge against the business or any of its owners. 	<ul style="list-style-type: none"> • If a contractor is working on a project, will the company be permitted to complete the contract if certification is revoked? 		<ul style="list-style-type: none"> • Indictment – should not be considered revoked or suspended. The rule should be the certification would be revoked or suspended if found guilty, not indicted.

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123:2-16-09	Demonstration of good faith effort to include EDGE business participation	Amendment	<ul style="list-style-type: none"> • Addition: Places additional requirements on the prime contractor to insure that good faith efforts are obtained. • Modification: Identify items needing submitted to establish good faith efforts. 	<ul style="list-style-type: none"> • Prime contractors send bid announcements at the last minute to minority and EDGE firms. Prime contractors use this documentation as their good faith efforts. How can the rules be strengthened to ensure this is addressed? • Good faith effort criteria should be more narrowly defined. • Where does a company go to vent concerns regarding a contractor that sends out notifications at the last minute? How is this issue addressed in the rules? • How are good faith efforts measured? Does the rule strengthen these measurements? • Who is monitoring the good faith efforts? • Who monitors the EDGE waiver system? 	<ul style="list-style-type: none"> • Remove “may” and replace with “shall/must.” • Good faith effort language needs to be strengthened. • The state should adopt the DBE good faith language (CFR Part 26 APPENDIX A (V)). The addition of DBE good faith language permits an industry-influenced review of “good faith” prior to consideration for any waiver. Too often, the review of what a bidder was able to do, with no consideration for what similarly situated bidders have been able to do results with the granting of waivers. If any bidder satisfies the requirement, why should bidders who don’t be awarded. 	<ul style="list-style-type: none"> • State should adopt language that would permit an industry-influenced review of the good faith efforts prior to consideration for any waiver. • Businesses should provide a business plan that includes how they will meet the goals – plan would be approved prior to award of contract – part of evaluation process (OFCC). • How do you hold prime contractors accountable for supplying false documents regarding good faith efforts?
123:2-16-13	EDGE data collection	Amendment	<ul style="list-style-type: none"> • Addition: Add term “contract” as a requirement of tracking for state agencies. • Modification: Removes requirement to track construction contracts by NIC code. 	<ul style="list-style-type: none"> • A stakeholder disagreed with the removal of tracking construction contracts by codes. An EDGE business that may not be qualified to perform the work may be awarded the contract over another EDGE firm that has experience in that area of work. • A stakeholder agreed with the removal of tracking contracts by codes. This amendment would allow EDGE firms to expand and grow their business. 	<ul style="list-style-type: none"> • DAS/EOD uses the United Nations Standard Products and Services Code (UNSPSC) and the Construction Specification Institute Codes, while SBA and ODOT uses North American Industrial Classification System (NAICS). There should be consistencies amongst the agencies. 	

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123:2-16-14	Joint venture	Amendment	<ul style="list-style-type: none"> • Addition: Add term “contract” as possible joint venture. • Addition: Add language to identify when a company does not perform a commercially useful function such as if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of EDGE participation. If an EDGE business enterprise does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force or the EDGE business enterprise subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, then the EDGE business enterprise is not performing a commercially useful function. 	<ul style="list-style-type: none"> • How can the joint venture rule be strengthened? • There are many front companies that enter into joint ventures. How can the State ensure this does not continue? Does the rule specifically address this issue? • Remove “may” and replace with “shall/must.” 		
123:2-16-15	Commercially useful function	Amendment		<ul style="list-style-type: none"> • Is the purpose of the rule changes to address front companies? • Who is monitoring front companies? 	<ul style="list-style-type: none"> • The state should adopt the DBE language as outlined in 49 CFR 26.55. There are too many pass-throughs and adopting DBE language would ensure that legitimate EDGE firms participate on state contracts. 	<ul style="list-style-type: none"> • The state should adopt the DBE language as outlined in 49 CFR 26.55. There are too many pass-throughs and adopting DBE language would ensure that legitimate EDGE firms participate on state contracts.

GENERAL QUESTIONS/COMMENTS:

- Race neutral programs have negative impact on minority firms.
- Is HB 584 consolidating with the EDGE requirements?
- Why doesn't the state have a streamlined certification process?
- How do we (business owners) collaborate with legislators to accomplish what the community needs and wants?
- Why doesn't the state send bids based on the codes they are certified under instead of receiving bids for all contracts?
- There are numerous proposed modifications involving the terms "shall" and "must" to "may" tend to undermine accountability and provide discretions where should be none.
- How does the state insure MBE and EDGE businesses get business with agencies, colleges and universities?
- Ohio Facilities Construction Commission needs to change their evaluation process. A contractor receives more points for being closer to the project than meeting the EDGE goals. EDGE participation should have more weight for the point value.
- DAS needs to evaluate the EDGE goal for construction. The goal has been set at 5% for the existence of the program and it has not been changed. The ORC states the goals should be evaluated annually for adjustments in establishing the EDGE goal for projects. The EDGE goal should be higher than 5%. DAS should model after ODOT's DBE goals. EDGE businesses cannot grow if the goal is only 5%.
- EDGE goals should be set based on the specific region. The EDGE certification letter should specify the region the business is certified to conduct work. The problem is that the company travel around the state and beat out local EDGE businesses in the region.
- There should be a reward for meeting the EDGE goals. Agencies give contractors a reward for completing a project earlier. If agency rewards a contractor for meeting their EDGE goals then there will be more contractors complying with goals.
- Minority businesses and advocates should be involved with OLBC and the rule recommendations.
- More feedback is needed from EDGE and minority businesses regarding standard size criteria requirement prior to filing with JCARR.
- State agency directors should be held accountable for not meeting the goals. It should be mandatory that the directors' personnel evaluations should include meeting the goals.
- What is the dollar amount the agency, colleges and universities are allowed to spend outside the bidding process for purchases? Does DAS track these dollars? If not, they should. The state will see many opportunities lost for MBEs and EDGEs.
- Does the agency have qualified personnel to investigate fraudulent companies?